

2 KAR 2:060. Adjudicatory hearings.

RELATES TO: KRS 6.611, 6.686, 6.691

STATUTORY AUTHORITY: KRS 6.666(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 6.666(5) requires the commission to promulgate administrative regulations necessary to implement KRS 6.601 through 6.849. KRS 6.686 requires the commission to conduct adjudicatory hearings into alleged violations of KRS 6.601 through 6.849 in appropriate cases. This administrative regulation establishes the requirements governing adjudicatory proceedings of the commission.

Section 1. Definitions. (1) "Commission" is defined by KRS 6.611(9).

(2) "Complaint" means a formal, written complaint filed in accordance with KRS 6.686 that accuses one (1) or more persons of violating a provision of KRS 6.601 to 6.849.

(3) "Enforcement counsel" means the attorney employed by the commission to investigate and prosecute a complaint.

(4) "Respondent" means a person accused in a complaint of violating any of the provisions of KRS 6.601 to 6.849.

Section 2. Joinder of Complaints. (1) Separate complaints against a single respondent may be consolidated by the commission and heard as a single case.

(2)(a) Separate complaints against two (2) or more respondents may be consolidated and heard as a single proceeding if the commission determines that the complaints are based upon the same or related set of facts.

(b) If allegations against two (2) or more respondents are heard as a single proceeding, the commission shall make separate findings regarding each respondent.

Section 3. Rulings on Motions. (1) A substantive or dispositive motion such as a motion to dismiss or a motion to exclude evidence shall be ruled on by the commission.

(2) A procedural motion such as a motion for a continuance shall be ruled on by the commission chair or another member authorized by the commission.

(3) All pleadings, motions, and exhibits shall be filed with the principal assistant of the commission staff and copies served on each respondent or respondent's counsel and on the commission's enforcement counsel in accordance with the Kentucky Rules of Civil Procedure.

Section 4. Authority for Settlement Negotiations. (1) The commission may authorize:

(a) Its enforcement counsel to attempt to negotiate a settlement with the respondent; and

(b) Its chair to accept or reject a proposed negotiated settlement.

(2) If a proposed negotiated settlement is reached and accepted, the procedures established in this subsection shall be followed.

(a) The commission shall conduct an adjudicatory hearing as required by KRS 6.691(5) before imposing any penalty on the respondent.

(b) The respondent shall waive the introduction of evidence at the hearing.

(3) If a proposed negotiated settlement is rejected, the respondent's offer of settlement shall not be used against the respondent.

Section 5. Witness Lists. (1) At least ten (10) days before the date set for the adjudicatory hearing, the attorneys for the parties and for the commission shall provide to the commission the names and addresses of all proposed witnesses.

(2) A copy of each witness list shall be served upon each opposing party or counsel as pro-

vided by the Kentucky Rules of Civil Procedure.

(3) Additional witnesses may only be called for rebuttal, or with the permission of the commission for good cause shown.

(4) Commission staff shall provide all witnesses with a copy of this administrative regulation in accordance with KRS 6.691(1).

Section 6. Prehearing Conference. (1) The commission chair may order that a prehearing conference be held for the purposes set out in Kentucky CR 95 with reasonable notice to each respondent or respondent's attorney and to enforcement counsel.

(2) The commission chair, or another member authorized by the commission, shall preside over the prehearing conference.

Section 7. Amendments to the Complaint or Answer. (1) The complaint may be amended before or after the commencement of the hearing to conform to the proof or to set forth additional facts.

(2) If the complaint is amended, the respondent shall be given twenty (20) days to answer the amended complaint and a reasonable time to prepare his or her defense against the matters charged in the amended complaint.

Section 8. Hearing Additional Evidence. (1) The commission may order a hearing for the taking of additional evidence at any time while the complaint is pending before it.

(2) The order shall set the time and place of the hearing and shall indicate the matters on which the evidence is to be taken.

(3) A copy of the order shall be sent by mail to the respondent or the respondent's attorney at least ten (10) days prior to the date of the hearing.

Section 9. Deliberations. The commission shall deliberate and publish its findings and conclusions in accordance with KRS 6.691(4) and (5).

Section 10. Transcript of Evidence. Adjudicatory hearings before the commission shall be reported by a reporter or recorded by an electronic device. (43 Ky.R. 146, 391; eff. 10-7-2016.)